

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES LAWRENCE MITCHELL, a/k/a HEAVY,
a/k/a KEVIN JAMES LAWRENCE,

Defendant-Appellant.

UNPUBLISHED

August 24, 1999

No. 203257

Washtenaw Circuit Court

LC No. 96-005794-FH

Before: White, P.J., and Markey and Wilder, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of assault with intent to commit unarmed robbery, MCL 750.88; MSA 28.283, and he was sentenced, as an habitual offender, to six to thirty years' imprisonment. He appeals by right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant contends that his rights to a fair trial and to present a defense were violated because the trial court failed to determine whether the complaining witness' assertion of the Fifth Amendment privilege at trial was valid, and that the trial court should have found the witness in contempt and/or offered the witness immunity. We disagree. Defendant's trial counsel objected to the admission of the witness' preliminary examination testimony on grounds that the witness' assertion of the Fifth Amendment privilege had not been shown to be valid. However, the witness' unavailability was adequately established. Moreover, defense counsel did not ask the trial court to hold the witness in contempt or grant the witness immunity. Cf. *People v Lawton*, 196 Mich App 341, 346; 492 NW2d 810 (1992).

Defendant also challenges the trial court's refusal to admit certain letters in which the witness allegedly recanted his preliminary examination testimony at least in part. We are unpersuaded, however, that the trial court abused its discretion in concluding that the letters were

inadmissible hearsay outside the scope of any hearsay exception. See *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

We affirm.

/s/ Helene N. White

/s/ Jane E. Markey

/s/ Kurtis T. Wilder